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LODGED ORIGINAL

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8 James R. Glidewell Dental Ceramics, Inc.  
d/b/a Glidewell Laboratories

9 CLERK U.S. DISTRICT COURT  
10 SANTA ANA  
11 BY AP

12 JAMES R. GLIDEWELL DENTAL  
13 CERAMICS, INC.,

14 Plaintiff,

15 VS.

16 KEATING DENTAL ARTS, INC.,

17 Defendant.

18 AND RELATED  
19 COUNTERCLAIMS.

20 Case No. SACV11-01309-DOC(ANx)

21 **PLAINTIFF'S EX PARTE  
22 APPLICATION TO FILE CERTAIN  
23 DOCUMENTS UNDER SEAL IN  
24 SUPPORT OF JAMES R.  
25 GLIDEWELL DENTAL CERAMICS,  
26 INC.'S MOTIONS FOR SUMMARY  
27 JUDGMENT**

28 Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013  
Jury Trial: February 26, 2013

PLAINTIFF'S EX PARTE APPLICATION TO FILE  
CERTAIN DOCUMENTS UNDER SEAL  
CASE NO. SACV11-01309 DOC (ANx)



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(213) 929-25001 **TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:**

2 **PLEASE TAKE NOTICE** that Plaintiff James R. Glidewell Dental  
 3 Ceramics, Inc. ("Plaintiff"), by and through its respective counsel, will and does  
 4 hereby apply to this Court *ex parte* for an Order to file the following documents  
 5 under seal (collectively "Lodged Documents"):

6 1. James R. Glidewell Dental Ceramic, Inc.'s Notice of Motion and  
 7 Motion for Partial Summary Judgment as to Keating's Invalidity Defense and  
 8 Counterclaim;

9 2. James R. Glidewell Dental Ceramic, Inc.'s Notice of Motion and  
 10 Motion for Partial Summary Judgment re Infringement of a Federally Registered  
 11 Mark (First Cause of Action) and Dismissal of Defendant's Second Affirmative  
 12 Defense and First Counterclaim;

13 3. [Proposed] Statement of Uncontroverted Facts and Conclusions of  
 14 Law in Support of Glidewell's Motion Partial Summary Judgment as to Keating's  
 15 Invalidity Defense and Counterclaim;

16 4. [Proposed] Statement of Uncontroverted Facts and Conclusions of  
 17 Law in Support of Glidewell's Motion Partial Summary Judgment re Infringement  
 18 of a Federally Registered Mark (First Cause of Action) and Dismissal of  
 19 Defendant's Second Affirmative Defense and First Counterclaim; and

20 5. The following exhibits attached to the Appendix of Evidence in  
 21 Support of James R. Glidewell's Dental Ceramics, Inc.'s Motions for Summary  
 22 Judgment:

23 Exhibit G: Declaration of Jim Shuck

24 Exhibit I: Declaration of Dr. Michael DiTolla

25 Exhibit K: Declaration of Robin Bartolo

26 Exhibit L: Declaration of Keith Allred

27 Exhibit M: Declaration of Nicole Fallon

28 Exhibit O: Declaration of Dr. Ronald Goldstein

PLAINTIFF'S *EX PARTE* APPLICATION TO FILE  
 CERTAIN DOCUMENTS UNDER SEAL  
 CASE NO. SACV11-01309 DOC (ANx)

Exhibit 1: April 2, 2012 fax transmittal to Nicole Fallon from Dr. Le's Dental Office (GDC00002445-2446)

Exhibit 2: April 3, 2012 Glidewell call note report (GDC00002444)

Exhibit 13: Glidewell Direct mailers and other information (GDC00000053-59) (contains sales/advertising numbers)

Exhibit 15: Keating prescription order forms and lab notes

Exhibit 46: Chart of monthly sales of BruxZir restorations compared to sales of porcelain fused to metal restorations that was compiled by Glidewell's marketing department. (GDC00000240)

Exhibit 73: E-mails from dentists to Dr. DiTolla regarding DiTolla's videos discussing BruxZir crowns (GDC000002393, 2397-2399)

Exhibit 74: E-mails from dentists to Dr. DiTolla supporting his conclusion that dentists understand that BruxZir identifies Glidewell as the source of the crown products (GDC000002396, 2397-2398, 2402, 2404.)

Exhibit 82: Defendant/Counterclaim Plaintiff's Response to Plaintiff/Counterclaim Defendant's First Set of Interrogatories Nos. 1-25 (Attorney's Eyes Only Exhibits)

Exhibit 83: Excerpts from Deposition of James Shuck

Exhibit 84: Excerpts from Deposition of Robert Dale Brandon

Exhibit 85: Excerpts from Deposition of Shaun Keating

Exhibit 86: Excerpts from Deposition of Diane Mallos Donich

25 To the extent possible, redacted versions of these documents will be filed  
26 publicly.  
27 This *Ex Parte* Application is unopposed. Good cause exists for this *Ex Aarte*  
28 Application to file under seal the Lodged Documents. The Protective Order entered

27        This *Ex Parte* Application is unopposed. Good cause exists for this *Ex Aarte*  
28 Application to file under seal the Lodged Documents. The Protective Order entered

1 in this case on January 30, 2012 (“Protective Order”) provides that any party filing  
 2 or lodging any “document” with the Court that discloses material designated as  
 3 “Confidential” or “Attorney’s Eyes Only” shall do so only after placing such  
 4 material in a sealed envelope or other sealed container pursuant to Fed. R. Civ. P.  
 5 26(c)(8) and Local Rule 79-5. Dkt. #19.

6 Local Rule 79-5.1 provides that, with the Court’s approval, the original and  
 7 the judge’s copy of the document requiring confidentiality protection shall be  
 8 sealed in separate envelopes with a copy of the title page attached to the front of  
 9 each envelope. In compliance with Local Rule 79-5.1, Plaintiff submits with this *Ex*  
 10 *Parte* Application the appropriately marked envelopes for the Lodged Documents.

11 According to Local Rules 7-19 and 7-19.1, Defendant Keating Dental Arts,  
 12 Inc.’s (“Defendant”) counsel in this matter are the following: (1) Lynda J. Zadra-  
 13 Symes, Jeffrey L. Van Hoosear, David G. Jankowski, KNOBBE, MARTENS,  
 14 OLSON & BEAR, LLP, 2040 Main Street, Fourteenth Floor, Irvine, California  
 15 92614; telephone: 949.760.0404; emails: [lynda.zadra-symes@kmob.com](mailto:lynda.zadra-symes@kmob.com),  
 16 [jeffrey.vanhoosear@kmob.com](mailto:jeffrey.vanhoosear@kmob.com), [david.jankowski@kmob.com](mailto:david.jankowski@kmob.com).

17 Pursuant to Local Rule 7-19.1, Plaintiff’s counsel, Mr. Seepan Parseghian,  
 18 informed Defendant’s counsel, Ms. Lynda J. Zadra-Symes, of this *ex parte*  
 19 application by e-mail on November 19, 2012. (Parseghian Decl., ¶ 3). On  
 20 November 19, 2012, Defendant’s counsel responded by electronic mail stating that  
 21 Defendant will not oppose this Ex Parte Application. (Parseghian Decl., ¶ 3).

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1  
2 Dated: November 19, 2012

3 SNELL & WILMER L.L.P.  
4

5 By: Deborah S. Malfranc for  
6 Philip J. Graves

7 Greer N. Shaw

8 Attorneys for Plaintiff

9 James R. Glidewell Dental Ceramics, Inc. dba  
10 GLIDEWELL LABORATORIES

11 Snell & Wilmer  
12 L.L.P.  
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PLAINTIFF'S EX PARTE APPLICATION TO FILE  
CERTAIN DOCUMENTS UNDER SEAL  
CASE NO. SACV11-01309 DOC (ANx)

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF *EX PARTE* APPLICATION**

Plaintiff applies *ex parte* to this Court for an Order permitting Plaintiff to file under seal the Lodged Documents pursuant to the Protective Order governing this case and Local Rule 79-5.1.

This *Ex Parte* Application is unopposed. Good cause exists for this *Ex Parte* Application. The Protective Order entered in this case on January 30, 2012 (“Protective Order”) provides that any party filing or lodging any “document” with the Court that discloses material designated as “Confidential” or “Attorney’s Eyes Only” shall do so only after placing such material in a sealed envelope or other sealed container pursuant to Fed. R. Civ. P. 26(c)(8) and Local Rule 79-5. Dkt. #19.

The Lodged Documents contain, reference, or incorporate discovery material designated either as “Confidential” or “Attorney’s Eyes Only.” (Declaration of Seepan Parseghian (“Parseghian Decl.”), ¶ 4). Moreover, the Lodged Documents also contain highly confidential financial, trade secret, and personal patient information concerning Plaintiff’s and/or Defendant’s products. (Declaration of Gary Prichard, ¶ 4, Parseghian Decl., ¶ 5). This information, if disclosed to the public, would cause Plaintiff and/or Defendant irreparable harm. *Id.* The Lodged Documents are necessary to support (1) Plaintiff’s Notice of Motion and Motion for Partial Summary Judgment as to Keating’s Invalidity Defense and Counterclaim, and (2) Plaintiff’s Notice of Motion and Motion for Partial Summary Judgment re Infringement of a Federally Registered Mark (First Cause of Action) and Dismissal of Defendant’s Second Affirmative Defense and First Counterclaim. (Parseghian Decl., ¶ 6).

Plaintiff requires that the Lodged Documents be filed under seal because they disclose confidential information relating to Plaintiff's and Defendant's business development, marketing strategies, trade secrets, and other confidential and

1 proprietary information that, if disclosed to competitors, could cause Plaintiff  
 2 and/or Defendant substantial harm. Also, because the Lodged Documents contain  
 3 information relating to Plaintiff's and Defendant's business development,  
 4 marketing strategies, trade secrets, and other confidential and proprietary  
 5 information, disclosure could result in misuse by unscrupulous third parties and  
 6 competitors by replicating valuable aspects of the BruxZir brand crown, and could  
 7 compromise Plaintiff's and/or Defendant's bargaining position in future business  
 8 negotiations.

9         Federal Rule of Civil Procedure 26(c) provides that a party may protect  
 10 confidential information via a protective order. Such an order is in place in this  
 11 matter. (Parseghian Decl., ¶ 4). Furthermore, the common law right of access to  
 12 court documents can be overcome by showing sufficiently important countervailing  
 13 interests. *Phillips ex. Rel. Byrd v. General Motors Corp.*, 307 F.3d 1206, 1212 (9th  
 14 Cir. 2002). In deciding whether such important countervailing interests exist, the  
 15 Court may look to the public interest in understanding the judicial process and  
 16 whether disclosure of the material could result in improper use of the material. *Id.*  
 17 at 1213. Here, the sealing of the Lodged Documents will likely have little impact  
 18 on the public interest in understanding the judicial process, given that the motions  
 19 for summary judgment in this case and the oppositions thereto are based on well-  
 20 settled trademark law and the application of such law to the particular facts at issue  
 21 here. Conversely, disclosure of the information could have considerable impact  
 22 upon Plaintiff and/or Defendant.

23         For the foregoing reasons, Plaintiff respectfully requests that the Lodged  
 24 Documents be filed under seal. In the event that the Court finds no good cause to  
 25 support the sealing of the Lodged Documents, Plaintiff respectfully requests that  
 26 they be filed regardless.

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1  
2 Dated: November 19, 2012

3 SNELL & WILMER L.L.P.  
4

5 By: Debrah S. Mulligan for  
6 Philip J. Graves  
7 Greer N. Shaw

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10 Attorneys for Plaintiff  
11 James R. Glidewell Dental Ceramics, Inc. dba  
12 GLIDEWELL LABORATORIES  
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1                   *Glidewell Laboratories v. Keating Dental Arts, Inc.*  
 2                   U.S. District Court, Central District of California, Case No. SACV11-01309-DOC (ANx)

3                   **PROOF OF SERVICE**

4                   I am employed in the County of Orange, State of California. I am over the age of  
 5                   18 and not a party to the within action; my business address is 600 Anton Boulevard,  
 6                   Suite 1400, Costa Mesa, CA 92626-7689.

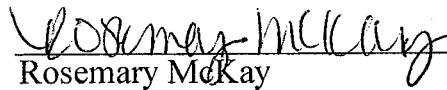
7                   On November 19, 2012, I served, in the manner indicated below, the foregoing  
 8                   document(s) described as **PLAINTIFF'S EX PARTE APPLICATION TO FILE**  
 9                   **CERTAIN DOCUMENTS UNDER SEAL IN SUPPORT OF JAMES R.**  
 10                   **GLIDEWELL DENTAL CERAMICS, INC.'S MOTIONS FOR SUMMARY**  
 11                   **JUDGMENT** on the interested parties in this action by placing true copies thereof,  
 12                   enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

13                   *Please see attached Service List*

- 14                    BY REGULAR MAIL: I caused such envelopes to be deposited in the United  
 15                   States mail at Costa Mesa, California, with postage thereon fully prepaid. I am  
 16                   readily familiar with the firm's practice of collection and processing  
 17                   correspondence for mailing. It is deposited with the United States Postal  
 18                   Service each day and that practice was followed in the ordinary course of  
 19                   business for the service herein attested to (C.C.P. § 1013(a)).
- 20                    BY FACSIMILE: (C.C.P. § 1013(e)(f)).
- 21                    BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered by air  
 22                   courier, with next day service, to the offices of the addressees. (C.C.P. §  
 23                   1013(c)(d)).
- 24                    BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand  
 25                   to the offices of the addressees. (C.C.P. § 1011(a)(b)).
- 26                    BY ELECTRONIC MAIL: I caused such document(s) to be delivered  
 27                   electronically to the following email address(es): David G. Jankowski  
 28                   david.jankowski@kmob.com, Jeffrey L. Van Hoosear  
 Jeffrey.vanhoosear@kmob.com , Lynda J. Zadra-Symes Lynda.zadra-  
 symes@kmob.com, litigation@kmob.com; Thomas L. Gourde  
 tgourdelaw@cox.net

I declare that I am employed in the office of a member of the bar of this court at  
 whose direction the service was made.

Executed on November 19, 2012, at Costa Mesa, California.

  
 27                   Rosemary McKay

*Glidewell Laboratories v. Keating Dental Arts, Inc.*  
U.S. District Court, Central District of California, Case No. SACV11-01309-DOC (ANX)

## SERVICE LIST

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